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9 Counsel for Tri-State Livestock Credit Corporation

10 **UNITED STATES BANKRUPTCY COURT**

11 **DISTRICT OF NEVADA**

12 In re

13 Case No. BK-N-11-52345

14 DOUBLE U LIVESTOCK, LLC,

15 Chapter 12

16 Debtor.

17 **TRI-STATE CREDIT CORPORATION'S
 MOTION TO CONVERT OR DISMISS
 CHAPTER 12 CASE DUE TO
 INELIGIBILITY UNDER 11 U.S.C.
 101(18)(B)**

18 Hearing Date: OST Requested
 19 Hearing Time: OST Requested
 20 Est. Hearing Time:

21 Secured Creditor Tri-State Livestock Credit Corporation, a California corporation ("Tri-
 22 State"), by and through its undersigned counsel, hereby files its Motion to Convert or Dismiss
 23 Chapter 12 Case Due to Ineligibility under 11 U.S.C. §101(18)(B) on the grounds that Debtor
 24 Double U Livestock, LLC's debts exceed the debt limit of \$3,792,650 set forth in 11 U.S.C.
 25 §101(18)(B). This Objection is supported by the following Memorandum of Points and
 26 Authorities, the concurrently-filed Declaration of Amy N. Tirre (the "Tirre Declaration"), all
 27 pleadings and papers of record, and any oral arguments of counsel at the hearing on this matter.

28 **MEMORANDUM OF POINTS AND AUTHORITIES**

29 **I. DEBTOR IS INELIGIBLE FOR CHAPTER 12 RELIEF BECAUSE
 30 THE TOTAL AMOUNT OF ITS DEBT EXCEEDS THE DEBT LIMIT
 31 OF \$3,792,650**

32 In order to be eligible for Chapter 12 relief, Debtor, which is an entity, must not have

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1 aggregate debts that exceed the amount of \$3,792,650. 11 U.S.C. §109(f); §101(18)(B). Section
 2 109(f) provides that “[o]nly a family farmer or family fisherman with regular annual income may
 3 be a debtor under Chapter 12 of this title.” Debtor is a farmer because it derives more than 80% of
 4 its income from a “farming operation,” which includes the raising of crops or livestock. 11 U.S.C.
 5 §§101(20),(21). Section 101(18)(B) defines “family farmer” as:

6 **(18)** The term “family farmer” means—
 7 ...

8 **(B)** corporation or partnership in which more than 50 percent of the outstanding
 9 stock or equity is held by one family, or by one family and the relatives of the
 10 members of such family, and such family or such relatives conduct the farming
 11 operation, and

- 12 (i) more than 80 percent of the value of its assets consists of assets related
 13 to the farming operation;
 14 (ii) its aggregate debts do not exceed \$3,792,650 and not less than 50
 15 percent of its aggregate noncontingent, liquidated debts (excluding a debt
 16 for one dwelling which is owned by such corporation or partnership and
 17 which a shareholder or partner maintains as a principal residence, unless
 18 such debt arises out of a farming operation), on the date the case is filed,
 19 arise out of the farming operation owned or operated by such corporation
 20 or such partnership; and
 21 (iii) if such corporation issues stock, such stock is not publicly traded.

22 11 U.S.C. §101(18)(B) (emphasis added). This statute makes clear that a Chapter 12 debtor’s
 23 aggregate debts may not exceed \$3,792,650.

24 Here, Debtor’s aggregate debts total in excess of \$3,792,650 by Debtor’s own admission
 25 and the claims identified in the claims register. Debtor’s Plan identifies: \$925,842 as the amount
 26 of the Class 1(a) claim (“Paris Family Trust”), \$1,960,169 as the amount of the Class 1(b) claim
 27 (Tri-State’s claim), \$18,718 as the amount of the Class 1(c) claim, \$11,821 as the amount of the
 28 Class 1(d) claim and \$12,000 as the amount of the Class 1(e) claim and \$120,000 as the amount of
 the Class 1(f) claim for a total of \$3,048,550 in secured claims. See Docket No. 68-2 at 6 of 26
 and Docket No. 68-1 at 6 of 9. Debtor’s Schedule F identifies an unsecured debt owed to Mary
 West in the amount of \$820,000 and the claims register shows that Mary West filed an unsecured

1 proof of claim in the amount of \$820,000, which is Claim #5, filed on October 17, 2011. A copy
 2 of this proof of claim is attached to the Tirre Declaration as Exhibit 5. See Docket No. 19 at p.15.
 3 This brings the total to \$3,868,550, which exceeds the debt limit of \$3,792,650 under 11 U.S.C.
 4 §101(18)(B). Accordingly, Debtor is ineligible for Chapter 12 relief and its Chapter 12 Plan
 5 cannot be confirmed.

6 Further, as detailed in the Tirre Declaration attached hereto, the above-referenced claims
 7 do not include a \$77,000 unsecured claim due to James A. West and Carleen West dba Sweetwater
 8 Ranch. Tirre Declaration at ¶5.

9 Further, it is undersigned counsel's understanding that the amount of the Paris Family
 10 Trust's claim through the petition date of July 21, 2011 is \$945,323.36. Tirre Declaration at ¶6.
 11 Thus, the total debt including the Wests' claim and the correct amount of the Paris Family Trust
 12 claim is \$3,965,031.60, which also exceeds the debt limit of \$3,792,650.

13 **CONCLUSION**

14 Debtor's Chapter 12 case should either be converted to Chapter 7 (preferably) or 11 or
 15 dismissed because Debtor is ineligible for relief under Chapter 12 because its debts exceed the
 16 debt limit of \$3,792,650 as required by 11 U.S.C. §101(18)(B).

17 LAW OFFICES OF AMY N. TIRRE, APC

18 By: /s/ Amy N. Tirre
 19 AMY N. TIRRE, ESQ.

20 Counsel for Tri-State Livestock Credit Corporation

CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of Law Offices of Amy N. Tirre, that I am over the age of 18 and not a party to the above-referenced case, and that on November 9, 2011 I filed the **TRI-STATE CREDIT CORPORATION'S MOTION TO CONVERT OR DISMISS CHAPTER 12 CASE DUE TO INELIGIBILITY UNDER 11 U.S.C. 101(18)(B)** as indicated:

x **BY NOTICE OF ELECTRONIC FILING:** through Electronic Case Filing System of the United States Bankruptcy Court, District of Nevada, to the individuals and/or entities at their email addresses as set forth below:

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BY HAND DELIVERY VIA COURIER: by causing hand delivery of the Document listed above via Reno Carson Messenger Service to the persons at the addresses set forth below.

BY MAIL: by placing the document listed above in a sealed envelope with Postage thereon fully prepaid in the United States Mail at Reno, Nevada, and addressed as set forth below. I am readily familiar with my office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on 9 November 2011, with postage thereon fully prepaid in the ordinary course of business.

DATED this November 9, 2011.

/s/ Andrea Black